

The *Emergencies Act*, R.S.C. 1985, c. 22

There are four types of emergencies that can be declared under the *Emergencies Act*: 1) a public welfare emergency; 2) a public order emergency; 3) an international emergency; and 4) a war emergency. The COVID-19 outbreak would be considered a public welfare emergency within the meaning of paragraph 5(b) of the Act because the virus is a disease in human beings that poses a danger to human life, has resulted in social disruption, and could result in the breakdown in the flow of essential goods, services, or resources that is so serious as to be a national emergency.

For the purposes of the Act, a national emergency is an urgent and critical situation of a temporary nature that:

1. seriously endangers the lives, health, or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or
2. seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada; and
3. cannot be effectively dealt with under any other law of Canada.

Before issuing a declaration, affected provinces and territories are to be consulted. The declaration will identify the territory over which it would be applicable if it is not the whole country.

THE EMERGENCIES ACT

OVERARCHING AUTHORITY

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The Parliament is the overarching authority. A declaration of public welfare emergency must be confirmed before the Houses of Parliament within seven days of the declaration, although it is in effect upon being made. This confirmation is sought by tabling a motion, signed by a minister of the Crown, together with an explanation of the reasons for issuing the declaration and a report on the consultations. This declaration expires at the end of ninety days unless it is revoked or continued in accordance with the Act. Subsequent to the confirmation process, the Governor in Council may issue orders or enact regulations in order to implement emergency measures.

Of course, orders or enacted regulations in order to implement emergency measures will need to identify who is the Minister (department or agency) responsible for the implementation.

Under s.8 of the Act, if the Governor in Council believes on reasonable grounds that they are necessary for dealing with the emergency, the Governor in Council may make orders or regulations in the following matters:

- the regulation or prohibition of travel from or within any specified area, where necessary for the protection of the health or safety of individuals;
- the evacuation of persons and removal of personal property from any specified area and making arrangements for the care and protection of the persons and property;
- the requisition, use or disposition of property;
- the authority of or direction to any person, or class of persons, to render essential services and to provide reasonable compensation for services rendered;
- the regulation of the distribution and availability of essential goods, services and resources;

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- the authorization and making of emergency payments;
- the establishment of emergency shelters and hospitals;
- the assessment of damage to any works or undertakings and their repair replacement or restoration; the assessment of the damage to the environment and the elimination or alleviation of the damage; and
- The imposition of penalties for contravention of the orders or regulations is permissible.

ROLE OF THE RCMP

- Once a declaration of emergency is made and the Governor-in-Council issues orders or enacts regulations, those orders or regulations become law.
- Under section 18(a) of the *RCMP Act* and 14(1)(a) of the *RCMP Regulations*, RCMP members serving as peace officers have a duty to enforce the law.
- Subsection 9(1) of the Act make it clear that the declaration of a public welfare emergency or the issuance of orders or regulations under s. 8(1) does not alter the control that a municipal or provincial government has over a police force over which it normally has control.
- Subsection 9(2) of the Act provides that where the RCMP is police of jurisdiction (via an arrangement under s. 20 of the *RCMP Act*), s. 9(1) preserves municipal or provincial government control of the RCMP, subject to the terms and conditions of the arrangement.

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- A declaration under the *Emergencies Act* does not modify police authorities nor does it grant new authorities. It only create new infractions to support the implementation of the taken measures. It allows the imposition on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment; or on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment, for contravention of any order or regulation made under this section.
- Measures taken would be subject to the *Charter*, the *Bill of Rights* and the *International Covenant on Civil and Political Rights*, particularly with respect to fundamental rights that are not to be limited or abridges even in a national emergency.

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